



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 13, 2022

IN THE MATTER OF:

Appeal Board No. 625301

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective March 3, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by TEACHERS INSURANCE prior to March 3, 2022, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. At the hearing, the Judge modified the initial determination to include an alternate issue, disqualifying the claimant from receiving benefits, on the basis that the claimant voluntarily separated from employment without good cause. Due process was accorded. By decision filed August 16, 2022 (), the Administrative Law Judge sustained the initial determination of voluntary separation and did not reach the

initial determination of misconduct.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed for over fifteen years as a senior administrative assistant for a financial services company. Due to the pandemic, the claimant was assigned to work remotely as of March 13, 2020. On

November 15, 2021, the employer notified employees that they were all to be vaccinated for COVID-19 by March 1, 2022, due to the existing public health emergency. The claimant immediately requested a religious exemption from the COVID-19 vaccination. On December 29, 2021, the employer denied the claimant's request for a religious exemption. Some of the claimant's unvaccinated coworkers were granted religious exemptions. The employer gave the claimant a deadline, of March 1, 2022, to comply with the vaccination requirement or face discharge. After that date, the claimant heard nothing from the employer as to her status and the claimant continued to work remotely. The claimant began a scheduled vacation as of February 20, 2022, which was to run through February 25, 2022.

While on vacation, on February 23, 2022, the employer's supervisor notified the claimant that the employer was discharging her for refusing to comply with the vaccination requirement. He asked her to draft her letter of resignation. The claimant refused. The employer then discharged the claimant the following day, February 24, 2022.

OPINION: The credible evidence establishes that the employer discharged the claimant on February 24, 2022, for failing to comply with the employer's COVID-19 vaccination requirement. However, some of the claimant's unvaccinated coworker were granted religious exemptions. Further, the employer discharged the claimant on February 24, in advance of the March 1st deadline for vaccination. We note that the employer did not appear at two hearings to provide testimony and evidence in this matter. Under these circumstances, we conclude that the claimant was separated from her employment under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determinations, disqualifying the claimant from receiving benefits, on the basis that the claimant voluntarily separated from employment without good cause, and in the alternative, disqualifying the claimant from receiving benefits, effective March 3, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by TEACHERS INSURANCE prior to March 3, 2022, cannot be used toward the establishment of a claim for benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER